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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of : PATENT
Walter DORR :
Serial No.: 10/542,781 : Art Unit: 3745
Filed: July 20, 2005 : Examiner: F. D. Lopez
For: PISTON-TYPE ACCUMULATOR : Appeal No. _____

REPLY BRIEF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Pursuant to 37 C.F.R. § 41.41, Applicant-Appellant submits the following Reply Brief in response to the July 7, 2009 Examiner's Answer in connection with the appeal of the above-identified application.

New Status of Claims

In the Examiner's Answer, the previously presented rejection of claims 20-24 has been withdrawn resulting in claims 20-24 now being allowed and no longer on appeal. Only claims 11-18 now stand rejected and are on appeal. Claims 1-10 remain cancelled, and claim 19 remains objected to as being dependent upon a rejected claim, but indicated as being allowable if rewritten in independent form.

Claim 11 is Patentably Distinguishable over the Applied Patents

The grounds of rejection are modified to now allege that the Peter support member 6 is part of the piston 2 and that the tube member 5 is part of the housing such that the interior of tube member 5 allegedly forms a part of gas chamber 12. This incorrect interpretation of the Peter patent attempts to satisfy the claim 11 recitation of the piston smaller circumferential section being located on an end of the piston opening on the gas space. Since col. 2, lines 48-54 of the Peter patent discloses that the gas space 12 is only between piston 2 and cover 3, the interior of tube member 5 does not constitute part of the gas space.

Claim 11 also states that the accumulator housing is in the form of a cylindrical tube and that the piston moves axially within this cylindrical tube to separate the spaces in the housing. A cylinder is uniformly defined as a surface traced by a straight line moving parallel to a fixed straight line and intersecting a fixed planar closed curve. With this definition, the cylinder must have a uniform cross section along its entire length. Since the Peter tube member 5 has a significantly different cross section than that of the Peter housing 1, the tube member cannot be part of the cylindrical tube in which the piston is movable, as required by claim 11. Claim 11 requires that the piston move axially in the cylindrical tube and separate the spaces in the housing formed by that cylindrical tube. Since the portion of the Peter support member relied upon for the smaller circumferential section and magnet arrangement are not within the cylindrical housing 1 of the Peter patent, the Peter patent does not supply these claim limitations. None of the other cited patents supply these deficiencies in the Peter patent.

The Examiner's Answer now attempts to identify an alleged shoulder 6C (if any exists at all) on the support member 6 of the Peter patent that is not between the gas and fluid spaces. However, the claimed combination requires that the radially extending shoulder surface extend

between the larger and smaller circumferential sections, with the larger and smaller circumferential sections facing axially the fluid space and the gas space, respectively. In this manner, the radially extending shoulder surface must be axially between the fluid space and the gas space. The Peter patent, as well as the other cited patents, fail to disclose or render obvious a radially extending shoulder surface supporting a magnet arrangement located axially between the gas space and the fluid space in an accumulator. Since only the piston 2, and not the support member 6, of the Peter patent separates the gas space and the fluid space, the structure of the Peter support member 6 cannot be relied upon to meet these claim limitations relative to the piston recited in claim 11.

Relative to the Clark patent, the Examiner states in the Examiner's Answer (at the bottom of page 5) that its threaded ring 28 holds "the arrangement (A) on the piston smaller circumferential section." Admittedly, the Clark does not relate to retaining a magnet arrangement, as disclosed in the other two cited patents. The failure to disclose such magnet arrangement fails to provide a reason or suggestion within the prior art to make the combination proposed in the rejection. Without an adequate reason or suggestion, the proposed rejection fails to present a *prima facie* case of obviousness.

Dependent Claims

Claims 12-18, being dependent upon claim 11, are also allowable for the above reasons and recite additional features further distinguishing them over the cited patents. The dependent claims do not rise or fall with the independent claim, as alleged. Since no specific comments are provided in the Examiner's Answer relative to the dependent claims, the record will not be burdened with further comments thereon.

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Any remaining contentions in the Examiner's Answer are adequately addressed in the Brief on Appeal, and are not repeated herein.

Conclusion

For the reasons presented in the Brief on Appeal and above, Applicant-Appellant submits that the rejections of the claims under 35 U.S.C. §103 are untenable, and requests that this rejected be reversed.

Respectfully submitted,



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